

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

CLC

GWENDOLYN L. KESTIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 18254-17 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

**ORDER**

This “collection due process” case is scheduled to be tried at the Court’s session in Winston-Salem, North Carolina, beginning May 21, 2018. However, on March 20, 2018, the Commissioner filed a motion for summary judgment (ECF 27). The Commissioner’s motion asserts that no trial is necessary in this case, because (he says) no relevant facts are in dispute. The motion contends that, on the basis of the undisputed facts, the case can be decided in the Commissioner’s favor. We will order petitioner Gwendolyn L. Kestin to file a response to the Commissioner’s motion.

With his motion (ECF 27), respondent filed a supporting memorandum (ECF 28) that includes at pages 2-10 a statement of “Facts” consisting of unnumbered paragraphs. The Tax Court Rule 121 does not require that a movant’s statement of undisputed facts be set out in numbered paragraphs; however, Rule 121(d) does require the non-movant who opposes such a motion to “set forth specific facts showing that there is a genuine dispute for trial”. Our experience is that--particularly where (as here) the non-movant is self-represented--it is expedient for the proposed undisputed facts to be stated in numbered paragraphs, so that the non-movant can be directed to specify by number any fact that is in dispute (and to oppose the asserted fact with appropriate evidence). We will therefore order respondent to supplement his motion with a statement of facts in numbered paragraphs.

To give effect to the foregoing, it is

ORDERED that no later than March 30, 2018, the Commissioner shall file with the Court and serve on petitioner, a supplement to his motion, which shall include his statement of facts, as previously stated in ECF 27 at 2-10, but with sequential numbers assigned to the proposed undisputed facts. (The Commissioner need not repeat his argument at pages 10-20 of ECF 28 nor re-submit the declaration or exhibits he already filed as ECF 29.) It is further

ORDERED that, no later than April 20, 2018, petitioner Gwendolyn L. Kestin shall file a response to the IRS's motion for summary judgment, as supplemented (due to be filed March 30, 2018). If Ms. Kestin disagrees with the facts set out in the IRS's motion, as supplemented, then her response should point out the specific facts in dispute. **Her response should state, by number, any assertion with which she disagrees, should explain the reason for her disagreement, and should cite whatever evidence supports her position.** If she disagrees with the IRS's argument as to the law, then her response should also set out her position on the disputed legal issues. Q&As that the Court has prepared on the subject "What is a motion for summary judgment? How should I respond to one?" are available at the Court's website and are printed on the page attached to this order. Ms. Kestin should note that Tax Court Rule 121(d) provides that if she "does not so respond [to a motion for summary judgment], then a decision, if appropriate, may be entered against" her. It is further

ORDERED that, no later than May 4, 2018, the IRS shall file and serve a reply (or, if petitioner has failed to file and serve a response, then the IRS shall file a status report).

**(Signed) David Gustafson  
Judge**

Dated: Washington, D.C.  
March 22, 2018

## **What is a motion for summary judgment? How should I respond to one?**

**The motion.** A motion for summary judgment requests a ruling from a judge on some or all of the issues in a case before trial. If a motion for summary judgment is filed, the judge will review the documents submitted by the parties and consider whether the case can be decided without a trial. The party filing the motion must show that there is no genuine dispute of any important fact and that the party filing the motion is entitled to judgment in their favor as a matter of law. See Rule 121.

**Your response.** If the Court orders you to file a response to a motion for summary judgment, your response must: specify which factual statements in the motion for summary judgment you dispute, state what you contend the actual facts are, and cite the specific evidence that you rely on to support your factual contentions. That is, you must do more than deny or disagree with the motion. Instead, you must set forth specific facts that establish there is a factual dispute and that a trial is necessary to resolve that dispute. It is not enough merely to claim that a fact is in dispute. You must support your claim that there is a question about a material fact (or facts) by submitting with your response the evidence on which you rely.

**Your evidence.** Your supporting evidence may include your own sworn affidavit or unsworn declaration given under penalty of perjury. (Form 18, Unsworn Declaration under Penalty of Perjury). Your declaration can state facts about which you have personal knowledge. If your evidence includes documents, then you should submit those with your response (preferably numbered as Exhibits), and your declaration should identify and authenticate those documents. Your supporting evidence may also include other affidavits, stipulations, admissions, answers to interrogatories, or deposition transcripts.

**Legal disputes.** A motion for summary judgment may involve not only factual disputes but also legal disputes. If you disagree with the IRS's explanation of the law that applies to your case, you should explain your disagreement and cite the statutes, regulations, or other authorities that apply to your case.

**Failure to respond.** If the IRS files a motion for summary judgment in your case and the Court orders you to file a response, then your failure to file a response may be grounds for granting the motion. See Rules 121(d) and 123(b).

**Results of summary judgment.** If a motion for summary judgment is granted in favor of the IRS, then there will be no trial, and a judgment will be entered against you. Similarly, if you file a motion for summary judgment and it is granted, then there will be no trial, and a judgment will be entered in your favor.

[http://www.ustaxcourt.gov/taxpayer\\_info\\_start.htm#START40](http://www.ustaxcourt.gov/taxpayer_info_start.htm#START40)